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14 **UNITED STATES DISTRICT COURT**

15 **DISTRICT OF NEVADA**

16 GERALD ARMSTRONG,

CASE NO. CV-N-97-00670 ECR (RAM)

17 Plaintiff,

18 vs.

19 CHURCH OF SCIENTOLOGY
INTERNATIONAL, a California corporation;
20 and the RELIGIOUS TECHNOLOGY
CENTER, a California corporation,
21

Defendants.
22

23 **MOTION FOR ATTORNEYS' FEES**
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1 COME NOW DEFENDANTS, by and through their attorney of record, and move this court for an
2 order awarding attorneys' fees and costs. This motion is made pursuant to 28 U.S.C. §1927, N.R.S. 18.010,
3 LR 51-1, LR 54-16 and based upon the Memorandum of Points and Authorities appended hereto.

4 DATED this 27th day of September , 1998.

5
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PROOF OF SERVICE BY MAIL

I, Mary Anna Singer, declare:

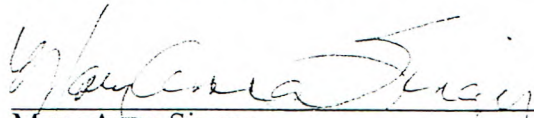
I am employed in the City of Reno, County of Washoe, State of Nevada by the law offices of Hale Lane Peek Dennison Howard and Anderson. My business address is 100 W. Liberty Street, Tenth Floor, Reno, Nevada 89501. I am over the age of 18 years and not a party to this action.

I am readily familiar with Hale Lane Peek Dennison Howard and Anderson's practice for collection and processing of its outgoing mail with the United States Postal Service. Such practice in the ordinary course of business provides for the deposit of all outgoing mail with the United States Postal Service on the same day it is collected and processed for mailing.

On September , 1998, I served the foregoing **MOTION FOR ATTORNEY'S FEES** by placing a true copy thereof in Hale Lane Peek Dennison Howard and Anderson's outgoing mail in a sealed envelope, addressed as follows:

George W. Abbott, Esquire
George W. Abbott, Chtd.
2245 B Meridian Boulevard
P.O. Box 98
Minden, NV 89423

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on September , 1998.



Mary Anna Singer

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14 **UNITED STATES DISTRICT COURT**
15 **DISTRICT OF NEVADA**

16 GERALD ARMSTRONG,

17 Plaintiff,

Civ. No. 97/00670 - HDM (RAM)

18 v.

19 CHURCH OF SCIENTOLOGY INTER-
20 NATIONAL, a California corporation; and
the RELIGIOUS TECHNOLOGY CENTER, a
California corporation,

21 Defendants.
22 _____/

23 **DEFENDANTS RELIGIOUS TECHNOLOGY CENTER**
24 **AND CHURCH OF SCIENTOLOGY INTERNATIONAL'S**
25 **MEMORANDUM OF LAW IN SUPPORT OF**
26 **MOTION FOR AN AWARD OF COUNSEL FEES AND EXPENSES**
27
28

Preliminary Statement

On September 3, 1998, following a full day evidentiary hearing held on September 2, this Court granted the motion of defendants Religious Technology Center (“RTC”) and Church of Scientology International (“CSI”) to dismiss this action for lack of subject matter jurisdiction on the grounds that, despite his representations to this Court, plaintiff Armstrong was not a citizen of the State of Nevada as of November 24, 1997, the date this action was commenced.¹

On September 14 Final Judgment dismissing this action was entered. RTC and CSI now move for an award of their counsel fees and expenses incurred herein from on and after June 9, 1998, to be taxed against Armstrong and his counsel, jointly and severally pursuant to 28 U.S.C. § 1927 and the inherent powers of this Court. *See, e.g., Roadway Express, Inc. v. Piper*, 447 U.S. 752 (1980); NRS 18.010, *Shultz v. Land*, 591 F. 2d 1268 (9th Cir. 1978).

Although defendants have every right to seek attorneys’ fees incurred from the inception of this case on November 24, 1997 on the grounds that this action was, from the outset, one filed in bad faith, vexatiously, and with knowledge that subject matter of jurisdiction did not lie, defendants here give Armstrong and his counsel the benefit of the doubt and seek only attorneys’ fees and expenses incurred from on and after June 9, the date plaintiff filed his opposition to the motions to dismiss, which defendants had filed on April 20, 1998. Defendants’ position is straightforward:

1. On June 9, plaintiff’s counsel served and filed an affidavit of plaintiff in opposition to defendants’ motion to dismiss which was, at a minimum, deceptive if not patently false;
2. together with plaintiff’s affidavit, plaintiff’s counsel served and filed, on June 9, his brief in support of plaintiff’s opposition to the motions to dismiss, which brief reiterated and endorsed several of the deceptive and/or false statements of fact set forth in plaintiff’s affidavit;
3. plaintiff not only knew the true facts when he executed his deceptive affidavit in

¹ The transcript of the evidentiary hearing and the transcript of the Court’s decision are dated “August 2” and “August 3,” respectively. These are typographical errors — the correct dates are September 2 and 3, respectively.

1 May, but plaintiff's counsel himself had first-hand knowledge of their
2 deception/falsity when he filed plaintiff's affidavit and when he filed his own brief
3 reprising parts of that affidavit;

- 4 4. As RTC's counsel put to the Court in his September 2 closing argument (September
5 2 transcript at pp. 217-218), had the true facts been disclosed in plaintiff's June
6 Opposition, and had plaintiff's affidavit and brief not been deceptive or false, this
7 Court would have readily granted defendants' motions to dismiss without defendants
8 having had to incur attorneys' fees and costs after June 9.

9 In addition, as shown herein, subsequent to June 9, plaintiff and his counsel resorted to all manner
10 of obstruction, bad faith, vexatious litigation and non-credible testimony to frustrate disclosure of the true
11 facts which, once discovered by defendants at great expense, overwhelmingly showed that plaintiff's claim
12 of Nevada citizenship was a sham and that plaintiff and his counsel knew that.

13 Based upon the evidence of record, RTC and CSI respectfully request this Court award to
14 them their full attorneys' fees and expenses incurred from June 9, 1998 through and including disposition
15 of this motion.²

16 Facts

17 On April 20, 1998 RTC and CSI filed motions to dismiss this action on the grounds, *inter*
18 *alia*, that this Court lacked subject matter jurisdiction because Armstrong was not a *bona fide* citizen of the
19 State of Nevada on November 24, 1997 or, for that matter, at any time thereafter. On June 9, plaintiff
20 served and filed his Opposition to those motions consisting of plaintiff's affidavit dated May 6 and his
21 counsel's brief. These filings constitute the starting point for the analysis on this motion.

22 A. Plaintiff's May 6th Affidavit

23 Plaintiff's May 6th Affidavit first asserts (at ¶ 9) that he has been "a resident of Nevada since
24 _____

25 ² Where a motion for an award of Attorneys' fees is well taken, the award includes the attorneys' fees incurred on the
26 fee application itself. *See Bernardi v. Yeutter*, 951 F.2d 971, 976 (9th Cir. 1991) (awarding fees and costs incurred in litigating
27 fee petition); *D'Emcnuele v. Montgomery Ward & Co., Inc.*, 904 F.2d 1379, 1387-88 (9th Cir. 1990) (time spent by counsel in
28 litigating right to fee award is compensable); *Clark v. City of Los Angeles*, 803 F.2d 987, 992 (9th Cir. 1986) (same).
Accordingly, RTC and CSI respectfully request that they be allowed ten (10) business days after notice of granting of this motion
to submit affidavits and supporting materials to quantify the amount of the fees to be awarded to them.

1 November, 1997;" that he has "never stated to anyone since that time [November 1997] that I was not a
2 resident of Nevada;" that he has received "substantive non-junk mail" at his Nevada post office box since
3 November 1997; that he has a "Nevada driver's license;" and that "I have work in Nevada, am actively
4 engaged in that work, and keep my personal property in Nevada." Each of these statements is deceptive,
5 if not just plain false.

6 First, as this Court found, plaintiff was never a *bona fide* resident of Nevada. Second, in his own
7 postings to the Internet after November 24, 1997, plaintiff "stated to [every]one" that the he had not yet
8 completed his move to Nevada (*see* defendants' trial exhibits 3, 12, and 29). Third, plaintiff was unable to
9 produce, either in discovery or at trial, a single piece of mail sent to him in Nevada. Plaintiff even admitted
10 that as to the one periodical he had regularly received while living in California, he had not even notified
11 the sender of a change of address to Nevada (September 2 transcript, at p. 142-143).

12 Fourth, in representing to this Court that he had a Nevada driver's license, plaintiff wilfully omitted
13 that he had first applied for and obtained it in mid-December 1997, one month after his claimed date of
14 Nevada citizenship (defs' tr. ex. 6). Fifth, plaintiff's claim that he "has work in Nevada" was shown to be
15 a sham. The only such "work" he had was working with his counsel on this, his own case.³ Similarly,
16 plaintiff's claim that he has been "actively engaged in that work [in Nevada]" is likewise sham. As plaintiff
17 admitted in his deposition and as this Court found on September 3, plaintiff's "employment" as Mr.
18 Abbott's paralegal averaged 4 hours per week for the less than thirty (30) days he had been in Nevada from
19 November 1997-August 1998, and for the extensive periods of time plaintiff was not in Nevada, he
20 performed no such work at all. Thus, for plaintiff to characterize this as "actively engaged" and for his
21 counsel, plaintiff's supposed "employer", who had first-hand knowledge of the facts, to concur in that
22 borders on perjury.

23 Finally, plaintiff's claim that he "keeps my personal property in Nevada" is, at a minimum,
24 deceptive. Plaintiff's "personal property" consists first of his papers, his Scientology files, which he
25

26 ³ Plaintiff's and his counsel's attempt to cast this "work" as employment is a smoking pistol of disingenuity. As
27 established at trial, plaintiff has a penchant for claiming he is "employed" as a paralegal by his attorney *du jour*, i.e. whichever
28 attorney happens to be representing him, plaintiff, at the time (September 2 transcript, at pp. 122, 124-125).

1 admitted are in Nevada, California and Canada (September 2 transcript, at p. 48-50). And even as to those
2 in Nevada, it is clear -- and this Court found -- that they were in Nevada in his counsel's office, because Mr.
3 Abbott was using them to represent plaintiff. The only other item of personal property plaintiff was able
4 to identify -- his computer -- has never been in Nevada, but rather, has been maintained by plaintiff in
5 Canada throughout this period of his supposed Nevada residency (September 2 transcript, at p. 138-139).

6 Plaintiff's May 6 affidavit asserts (at ¶ 15) that he "had been doing, was doing and would
7 be doing legal work in a law firm in Nevada." Simply put, a client who assists his own counsel in
8 representing him is not his counsel's employee and is not engaged in "legal work." Similarly, plaintiff's
9 additional claim (Aff. ¶ 21) that in November 1997, he "began to work in Nevada" is pure fiction. The only
10 "work" plaintiff did in Nevada in November 1997 was to help his counsel to prepare his Complaint in this
11 action. And as soon as that was done and before it was even filed on November 24, plaintiff had left
12 Nevada on an airplane and returned to his home in Canada.

13 B. Plaintiff's Counsel's June 9 Opposition Brief

14 Together with plaintiff's affidavit, his counsel served and filed on June 9 his brief in opposition to
15 defendants' motions to dismiss. In that brief, plaintiff's counsel represents, reiterates and endorses the
16 statements set forth in plaintiff's affidavit respecting his alleged Nevada residence. *See* plaintiff's opposing
17 brief at, e.g., pp. 4, 5, 10.

18 C. What Plaintiff and His Counsel Concealed From This Court

19 Nowhere in their claim of plaintiff's Nevada residence contained in plaintiff's May 6 affidavit or
20 his counsel's June 9 brief, did plaintiff or his counsel disclose plaintiff's actual Nevada "residence address."
21 i.e., the floor of Mr. Abbott's law office. Nowhere in these papers did they disclose that the "law firm" in
22 Nevada by whom plaintiff was supposedly employed to do "legal work" was none other than Mr. Abbott.

23 Plaintiff and his counsel both full well knew the truth, the whole truth, when they filed plaintiff's
24 opposition to the motions to dismiss. Had plaintiff and his counsel then candidly disclosed to this Court:

- 25 i. that plaintiff's Nevada residence was sleeping on the floor in Mr. Abbott's law
26 office, the "residence address" he listed on his application for a Nevada driver's
27 license in December 1997 (defs' trial ex. 6);

- 1 ii. that the unidentified "law firm" which employed plaintiff was Mr. Abbott's;
- 2 iii. that plaintiff's "employment" was anything but "active" and, in truth, was not
- 3 "employment" at all, but rather, a complete sham;
- 4 iv. that plaintiff's claim of his personal property being in Nevada was, at best,
- 5 incomplete and deceptive; and
- 6 v. that plaintiff spends the overwhelming amount of his time in Canada, coming to
- 7 Nevada only when necessary for this case,

8 it is highly doubtful that this Court would have needed an evidentiary hearing at all. Indeed, RTC and CSI
9 are firmly of the belief that had the true facts been disclosed, this Court would have readily seen through
10 plaintiff's sham and its July 9, 1998 Order would have been one granting their motions to dismiss without
11 any further proceedings.

12 Most disturbing is plaintiff's counsel's personal culpability in deceiving this Court.
13 Plaintiff's counsel surely knew that his client's claimed, but undisclosed to this Court, Nevada residence
14 was on the floor of counsel's office. Plaintiff's counsel surely knew he did not "employ" plaintiff.⁴ It is
15 one thing — unfortunately not uncommon — for this or any other plaintiff to take liberties with the truth
16 in an affidavit filed with a court. But it is quite another, far more egregious evil for an attorney to be party
17 to such deception by endorsing it and by submitting what he personally knew to be his client's false and
18 deceptive affidavit to this Court and then endorsing and arguing from it in his brief and at the September
19 2 trial.⁵

20 But plaintiff and his attorney did not stop there. Rather, they continued to engage in
21 deceptive, if not sanctionable conduct, after the June 9 filing of plaintiff's Opposition to defendants' motion
22 to dismiss.

24 ⁴ Compelling proof that plaintiff's counsel well knew the falsity of this employment claim is that he, counsel, did not
25 provide any W-2 form or 1099 form for 1997 to plaintiff (September 2 transcript, p. 122), despite that plaintiff's counsel surely
26 knew that as an "employer," he was required to do so even if the employee's compensation is in kind (e.g., room and board),
27 rather than in cash.

28 ⁵ Indeed, Rule 11(b), Fed. R. Civ. P., specifically prohibits an attorney -- at the risk of sanctions -- from "filing,
submitting or later advocating" a paper which he knows to be false or deceptive even when he himself did not sign the offending
paper.

1 D. Plaintiff's Counsel's June 11, 1998 Declaration

2 On June 11, plaintiff's counsel served and filed his own Declaration to explain his failure to timely
3 comply with this Court's filing requirements. In that Declaration (at ¶ 8, pp. 4-5), Mr. Abbott shamelessly
4 tried to tug at this Court's heart strings by suggesting that he was representing plaintiff out of the goodness
5 of his own heart on a mission for mercy to right the terrible wrongs done to plaintiff. In truth, as Armstrong
6 admitted (September 2 transcript, p. 118, 168), Mr. Abbott would not represent him, and would not file this
7 action, until, in November 1997, Mr. Minton paid Mr. Abbott \$10,000 to draft and file the Complaint
8 herein.⁶

9 Defendants hasten to add that they do not believe Mr. Abbott's efforts to clothe himself as the *pro*
10 *bono* white knight had any effect on this Court. The point is that Mr. Abbott tried to advance this charade
11 knowing full well that his representation of plaintiff herein was occasioned by the fact that he had been
12 handsomely paid.

13 E. Plaintiff's Counsel's Discovery Misconduct

14 Plaintiff and his counsel apparently hoped that their June 9 opposition papers would deflect this
15 Court's attention from the jurisdiction issues and it would defer determination to a (much) later date.
16 Indeed, plaintiff's counsel's opposing brief (at p. 13), suggested this. However, on July 9, this Court issued
17 an Order directing an evidentiary hearing on the subject matter jurisdiction issue. At that point, plaintiff
18 and his counsel conceived and implemented a plan to conceal and obscure the true facts respecting
19 plaintiff's supposed Nevada citizenship and "employment" and to actively obstruct defendants' efforts to
20 uncover the truth.

21 Promptly upon receipt of this Court's July 9 Order, defendants' served a Notice of Deposition of
22 Plaintiff and Document Request, both strictly limited to the issue on which plaintiff (and his counsel) had
23 the sole knowledge -- plaintiff's alleged residence in Nevada (defs' trial ex. 1).⁷ The Notice was returnable

24 _____
25 ⁶ Defendants have no idea how much Mr. Abbott has been paid in 1998 by Mr. Minton for his representation here of
26 Armstrong, but one could safely assume that after taking \$10,000 in 1997 to draft the Complaint herein, Mr. Abbott did not, in
1998, become a *pro bono* counsel.

27 ⁷ Earlier, on July 8, 1998, the Court entered upon the consent of counsel, a Scheduling Order under which all merits
28 discovery would be deferred until this Court ruled on defendants' motions to dismiss.

1 August 5. Mr. Abbott refused to comply offering *seriatim*:

- 2 i. that he was going to be out of town on vacation at a family reunion the entire weeks
- 3 of August 3 and August 10, returning to Reno on August 19 (the day before the then-
- 4 scheduled August 20 evidentiary hearing before this Court) and therefore, he had no
- 5 time to comply with defendants' discovery notice;
- 6 ii. that he would not comply unless defendants complied with his Notices of
- 7 Depositions served thereafter;⁸ and
- 8 iii. that plaintiff was entitled to thirty (30) days' notice for discovery.

9 Despite the persistent, good faith efforts of defendants' counsel, Mr. Abbott would not relent, would
10 not agree to produce any documents, would not agree to produce plaintiff for deposition. Consequently,
11 defendants were obliged to seek Court assistance and on July 28, 1998, after a 45-minute hearing during
12 which Mr. Abbott reiterated each of these three "objections" (*see* transcript, pp. 17-19, **Exhibit "A"** hereto),
13 Magistrate Judge Atkins Ordered that plaintiff comply with defendants' discovery notice. That, however,
14 was not the last word. The deposition of plaintiff did not go forward on the date Ordered because Mr.
15 Abbott took ill and advised that per his doctor, he would not be available to resume work until August 19th,
16 coincidentally the day before the then-scheduled August 20th evidentiary hearing. On that basis, Magistrate
17 Judge McQuaid issued an Order on August 4 postponing the evidentiary hearing before this Court to
18 September 2 and directing that plaintiff comply with defendants' discovery notice between August 19 and
19 27, the exact date to be fixed by counsel.

20 Defendants' counsel then wrote to Mr. Abbott on August 11, suggesting alternative dates for the
21 deposition of plaintiff in accordance with the Magistrate Judge's Order. Mr. Abbott did not respond to the
22 letter. Accordingly, defendants were obliged to again seek judicial intervention and on August 20, a hearing
23 was held before Magistrate Judge McQuaid. At that hearing, Mr. Abbott reiterated his objections to any
24 discovery of plaintiff — the very same objections he had argued earlier and which Magistrate Judge Atkins

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26 ⁸ Despite that the one issue for the hearing clearly defined by this Court's July 9 Order was plaintiff's claim of Nevada
27 citizenship, Mr. Abbott, on July 21, 1998, served "deposition notices" (but no subpoenas) on non-parties David Miscavige,
28 Michael Rinder and "wger", calling for depositions to be held in California on August 5, 12 and 14, all days in the very two
weeks he claimed he was going to be on vacation and unavailable.

1 had overruled. The Magistrate Judge then Ordered plaintiff to comply on August 19. But that was not the
2 end of it. It took two more hearings before the Magistrate Judge — initiated by Mr. Abbott in the nature
3 of re-argument — before plaintiff actually submitted to deposition on August 24.

4 In sum, it took four (4) hearings before the Magistrate Judges of this Court for defendants to secure
5 from plaintiff the most basic discovery they were clearly entitled to and which established decisively that
6 plaintiff's claims of a Nevada domicile were sham.

7 F. Plaintiff's Trial Testimony

8 Plaintiff's obstructions and pursuit of his sham claim of Nevada domicile continued before this
9 Court at the September 2 hearing. Most notably, despite his deposition admission that he "worked" for Mr.
10 Abbott on average only 4 hours per week and did not work for him at all while he was in Canada, plaintiff
11 tried to testify before this Court on September 2 that he worked 30 hours per week for Mr. Abbott.⁹ This
12 Court recognized that testimony as not credible. Beyond this, defendants could burden this Court with a
13 discussion of many more examples of plaintiff's patently evasive, non-responsive and deceptive testimony
14 on September 2, but it would serve no purpose; this Court has seen plaintiff and, as expressed in its
15 September 3 ruling, has noted plaintiff's lack of credibility.

16 In sum, had plaintiff and his counsel been candid rather than deceptive in their June 9 Opposition
17 to defendants' motions to dismiss, had they told this Court the truth then, had they disclosed the true facts
18 as ferreted out by defendants in discovery, it is highly probable that this Court would have granted
19 defendants' motion in July without the need for any further proceedings. Instead, it was only because of
20 plaintiff's and his counsel's deceptive June 9 Opposition that defendants were obliged to incur legal fees
21 and expenses after that date, a circumstance itself exacerbated by the other, post-June 9 conduct by plaintiff
22 and his counsel.

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27 ⁹ Of course, were that true, it would only exacerbate Mr. Abbott's failure to issue a W-2 or 1099 form for 1997 to
28 plaintiff.

Argument

Defendants ought to be awarded their post-June 9 counsel fees and expenses under at least 28 U.S.C. § 1927 and/or the inherent powers of this Court under *Roadway Express*¹⁰ since these costs were incurred solely because of plaintiff's and his counsel's misconduct starting with plaintiff's June 9 Opposition.¹¹

First, 28 U.S.C. § 1927 allows for an award of counsel fees against plaintiff's counsel for "unreasonably and vexatiously" protracting this case. By definition, an attorney who violates Rule 11, who submits or argues facts which he knows to be false, has acted "unreasonably"; by definition a violation of Rule 11 is "unreasonable." See, e.g., *Trulis v. Barton*, 107 F.3d 685, 692 (9th Cir. 1997) (attorney's continuation of lawsuit after entry of order confirming bankruptcy plan which barred it was reckless as a matter of law and vexatiously multiplied proceedings warranting sanctions under § 1927); *Schutts v. Bently Nevada Corp.*, 966 F. Supp. 1549, 1559-60 (D. Nev. 1997) (sanctioning plaintiff's counsel pursuant to § 1927 where he repeatedly ignored proper requests for discovery, forcing defendant to seek a motion to compel, disregarded strong hints from defense counsel that plaintiff's claim was a certain loser, and filed a "worthless" opposition to defendant's summary judgment motion ignoring adverse controlling authority cited to him); *Operating Engineers Pension Trust v. G.C. Wallace, Inc.*, 159 F.R.D. 536, 540-42 (D. Nev. 1994) (where plaintiff's counsel should have known before filing opposition to motion for summary judgment that plaintiff had no cause to seek further prosecution of action, an award of attorneys' fees against plaintiff's counsel was warranted pursuant to both § 1927 and Fed. R. Civ. P. 11).

Second, under the *Roadway Express* principle, this Court has the inherent power to sanction, including by awarding attorneys' fees, any litigant and his attorney who has proceeded in bad faith. *Corder v. Howard Johnson & Co.*, 53 F.3d 225, 232 (9th Cir. 1995) ("[A] court may impose attorney's fees . . . as an exercise of the court's inherent power to impose sanctions to curb abusive litigation practices."); *Toombs v. Leone, Jr.*, 777 F.2d 464, 471 (9th Cir. 1985) ("A district court's award of attorney's fees in response to

¹⁰ *Roadway Express, Inc. v. Piper*, 447 U.S. 752 (1980).

¹¹ In addition, this Court has the power under Rule 11(c)(i)(B), on notice, to impose sanctions, including an award to defendants of counsel fees, for plaintiff's counsel's blatant violation of Rule 11(b) in submitting and advocating from plaintiff's May 6 Affidavit facts which plaintiff's counsel himself knew to be untrue.

1 attorney misconduct in litigation may be founded upon the ‘inherent power’ of the judiciary . . . or upon the
2 authority conferred by 28 U.S.C. § 1927.”); *Schutts*, 966 F. Supp. at 1561 (“[T]his court may in the exercise
3 of its inherent powers assess attorneys’ fees against counsel. . . . The court’s inherent power therefore
4 permits it to assess attorneys’ fees when a party has acted in bad faith, vexatiously, wantonly, or for
5 oppressive purposes.”).

6 Here, there can be no question that plaintiff and his counsel proceeded in bad faith, misrepresented
7 the critical relevant facts to this Court, and then engaged in a persistent effort to obstruct defendants’
8 discovery of the truth. Nor can there be any question that the misconduct of plaintiff and his attorney was
9 the proximate cause of all of the attorneys’ fees and expenses incurred by defendants after June 9. Once
10 the true facts were put before this Court on September 2, this Court promptly and decisively granted
11 defendants’ motions to dismiss. There is no basis to assume that this same judgment would not have
12 obtained in July had plaintiff and his counsel been candid with this Court in their June 9 opposition papers.
13 Simply put, if the September 2 presentation of the true facts known all along by plaintiff and his counsel
14 impelled this Court to grant the motions to dismiss then, *a priori*, had these facts been disclosed rather than
15 concealed and misreported in June, this Court would have made the same decision then.

16 In asking for an award of counsel fees and expenses to be against both plaintiff and his counsel,
17 defendants note that plaintiff’s counsel here is particularly culpable because, while there are some situations
18 in which counsel relies on his client, Mr. Abbott had personal, first-hand knowledge of the true facts. In
19 addition, defendants note that plaintiff claims to be without assets (other than his papers and his computer),
20 has no job or visible means of support, and did not even earn enough to file a tax return for the year 1997
21 (September 2 transcript at p. 116-118), so that an award solely against plaintiff would be truly hollow. The
22 only meaningful relief available to defendants is an award, jointly and severally, against plaintiff and his
23 counsel.

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Conclusion

Defendants' motion should be granted in all respects and defendants permitted ten (10) business days for notice of the granting of this motion to submit affidavits and supporting materials quantifying the amount to be awarded against plaintiff and his counsel, jointly and severally.

Dated: September 28, 1998

Respectfully submitted,

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GERALD ARMSTRONG,	.	CASE NO. CV-N-97-670-ECR (RAM)
	.	
PLAINTIFF,	.	RENO, NEVADA
	.	JULY 28, 1998
VS.	.	
	.	
CHURCH OF SCIENTOLOGY	.	
INT'L, ET AL.,	.	
	.	
DEFENDANTS.	.	
.	

TELEPHONIC CONFERENCE REGARDING MOTION
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE PHYLLIS HALSEY ATKINS
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PLAINTIFF:	GEORGE W. ABBOTT, ESQ. 2245 B MERIDIAN BOULEVARD MINDEN, NV 89423
FOR THE DEFENDANTS:	J. PATRICK FLANAGAN, ESQ. 100 WEST LIBERTY, TENTH FLOOR RENO, NV 89501
	SAMUEL D. ROSEN, ESQ. ERIC LIBERMAN, ESQ. 399 PARK AVENUE NEW YORK, NY 10022

TAPE NO. 98-82

TRANSCRIPTION:	LETTER PERFECT P.O. BOX 70626 RENO, NV 89570 702/358-8973
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PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING, TRANSCRIPT
PRODUCED BY LETTER PERFECT.

1 MR. ROSEN: I CAN BARELY HEAR YOU, YOUR HONOR. THIS
2 IS MR. ROSEN. I CAN HEAR MR. FLANAGAN VERY WELL, BUT --

3 THE COURT: OKAY.

4 MR. ROSEN: IF WE TRY TO SPEAK UP, IS THAT BETTER?

5 THE COURT: IT'S SOME BETTER. CAN YOU HEAR ME NOW?

6 MR. ROSEN: A LITTLE BETTER, YES, YOUR HONOR.

7 THE COURT: I'M PRACTICALLY EATING THE MICROPHONE,
8 SO --

9 MR. ABBOTT: AM I LISTENING TO THE JUDGE? THIS IS
10 ABBOTT.

11 THE COURT: YES. YOU ARE.

12 MR. ABBOTT: HI, JUDGE. I HAVEN'T TALKED TO YOU IN A
13 LONG TIME --

14 THE COURT: NO, NOT IN A LONG TIME.

15 MR. ABBOTT: -- AND NOW I CAN HEAR YOU.

16 THE COURT: NOW, THE REASON THAT I CALLED THIS -- SO
17 THAT PEOPLE WILL UNDERSTAND RIGHT AWAY, I'M NOT GONNA TOUCH
18 YOUR MOTION FOR RECONSIDERATION. THAT, OBVIOUSLY, WOULD BE
19 JUDGE REED'S, AND I'M SURE NO MAGISTRATE JUDGE WOULD GO --
20 WOULD TRY TO CHANGE THAT. BUT I DID SEE THE DEAL ON THE
21 MOTION TO COMPEL AND JUDGE MCQUAID AND JUDGE REED, BOTH, ARE
22 AWAY THIS WEEK. AND I THOUGHT MAYBE IF WE TALKED ABOUT IT A
23 LITTLE BIT, WE CAN GET SOME TIME RESOLVED.

24 AS I UNDERSTAND IT, YOU HAVE A HEARING SET BEFORE
25 JUDGE REED ON THE 20TH OF AUGUST.

1 MR. ROSEN: CORRECT.

2 THE COURT: AND AT THAT TIME, THE PARTIES ARE GOING
3 TO PRESENT EVIDENCE SO THAT THE COURT CAN DETERMINE WHETHER
4 THE PLAINTIFF WAS DOMICILED IN NEVADA WHEN THE CASE WAS FILED.
5 AND THAT THE DEFENDANTS APPARENTLY BELIEVE THAT HE WAS
6 DOMICILED IN CALIFORNIA, IN WHICH CASE THERE WOULDN'T BE ANY
7 DIVERSITY AND THE COURT WOULDN'T HAVE ANY SUBJECT MATTER
8 JURISDICTION. IS THAT ESSENTIALLY THE PROBLEM?

9 MR. ROSEN: THAT'S CORRECT, YOUR HONOR.

10 THE COURT: OKAY. SO, WITH IT BEING ON THE 20TH OF
11 AUGUST, THE DEFENDANTS WANTED TO TAKE THE DEPOSITION OF THE
12 PLAINTIFF CONCERNING THESE MATTERS. AND YOU COULDN'T AGREE ON
13 DATES. BUT, EVEN IF YOU COULD, THE PLAINTIFF WASN'T GONNA
14 COME UNLESS SOME PAPERS IN MARIN COUNTY ARE UNSEALED. IS THAT
15 ESSENTIALLY WHAT WE'RE TALKING ABOUT?

16 MR. ROSEN: YES, YOUR HONOR.

17 THE COURT: AND, BESIDES THAT, MR. ABBOTT'S GONNA BE
18 GONE FOR THE FIRST TWO WEEKS ON VACATION. AND, SO, THE 20TH
19 IS ON A THURSDAY AND IF YOU'RE GONE FOR TWO WEEKS, THEN THE
20 MONDAY BEFORE THAT IS THE 17TH. THAT WOULDN'T GIVE VERY MUCH
21 TIME.

22 MR. ROSEN: YOUR HONOR, WE HAD OFFERED TO DO IT NEXT
23 WEEK, ON WEDNESDAY OR THURSDAY --

24 MR. FLANAGAN: THIS WEEK.

25 THE COURT: THIS WEEK.

1 MR. ROSEN: OR, I'M SORRY, THIS WEEK. WEDNESDAY,
2 THURSDAY, PERHAPS.

3 THE COURT: I UNDERSTAND. THAT'S WHY I THOUGHT,
4 WELL, OKAY. WHY CAN'T WE TALK ABOUT IT NOW BEFORE MR. ABBOTT
5 GOES ON VACATION.

6 MR. ROSEN: THAT'S FINE, YOUR HONOR.

7 THE COURT: OKAY. MR. ABBOTT, WHAT DO YOU THINK?

8 MR. ABBOTT: WELL, I HAD PREPARED -- I JUST RETURNED
9 LATE LAST EVENING FROM SOJOURNING IN THREE DIFFERENT
10 CALIFORNIA COURTS, ONE OF THEM IN LANCASTER, OUT OF LOS
11 ANGELES. I DIDN'T KNOW THEY HAD A COURT THAT DISTANT FROM THE
12 CITY OF LOS ANGELES. AND ALSO A COUPLE OF CALIFORNIA COURTS.
13 SO, I FOUND IN THE OFFICE THIS MORNING THESE SEVERAL MOTIONS.

14 THE COURT: AH-HA.

15 MR. ABBOTT: I HAVE PREPARED IN MY HANDWRITING AND
16 HAD PUT UP ON THE SCREEN HERE, WHEN I EXAMINED THE REST OF
17 THESE DOCUMENTS, A DRAFT OF MY OBJECTION TO PLAINTIFF, THIS IS
18 MY OBJECTION TO WHAT I BELIEVE IS A DEFECTIVE RTC NOTICE, FOR
19 TAKING OF A DEPOSITION. I BELIEVE THAT COUPLING THE REQUEST
20 TO TAKE THE DEPOSITION WITH THE PRODUCTION OF DOCUMENTS
21 REQUIRES, UNDER RULE 34, THAT THE RECIPIENT OF THE REQUEST
22 HAVE 30 DAYS TO FILE ANY OBJECTIONS OR TO FILE, IN ANY CASE, A
23 RESPONSE TO THE REQUEST FOR DEPOSITION AND PRODUCTION OF
24 DOCUMENTS. THAT WAS MY FIRST POSITION ON IT, THAT IT WAS NOT
25 CORRECTLY NOTICED AND I THINK MR. FLANAGAN WILL CONCEDE THAT

1 THAT WAS BROUGHT UP IN ONE OF OUR TELEPHONE DISCUSSIONS ON IT.

2 AS TO MY -- I'VE HAD TO JIGGLE MY SCHEDULE AROUND
3 GOING TO DENVER AND OMAHA, AND BEYOND SEPTEMBER 5TH -- EXCUSE
4 ME, AUGUST 5TH -- I WOULD HAVE SOME FLEXIBILITY. IN FACT WE
5 HAD NOTICED, HAD ASKED MARY, IN MY OFFICE, TO SEND OFF NOTICES
6 TO TAKE THE DEPOSITIONS OF TWO OR THREE OF THE DEFENDANTS' KEY
7 PERSONNEL.

8 BUT THE MATTER BEFORE US NOW, I THINK, IS WHETHER THE
9 30 DAY RULE APPLIES. I FIND NOTHING IN OUR LOCAL RULES WHICH
10 PURPORTS TO DISPENSE WITH THAT 30 DAY RULE.

11 THE COURT: SO AS FAR AS YOU'RE CONCERNED, THEN, IT
12 WOULD NOT BE POSSIBLE FROM HERE ON, THEN, TO HAVE ANY KIND OF
13 DOCUMENTS PRESENTED BEFORE THE HEARING.

14 MR. ABBOTT: WELL, WE DO NOT, YOUR HONOR, AT ALL. I
15 FIND IN MY MATERIAL FOR FEDERAL RULES, THAT THE REASON FOR THE
16 30 DAY RULE IS PRECISELY WHY WE'RE TALKING. THE 30 DAY RULE
17 WAS PUT IN SO THAT A REQUESTING PARTY COULD NOT CIRCUM -- THE
18 30 DAY RULE COULD NOT BE CIRCUMVENTED BY SIMPLY FILING A
19 NOTICE OF DEPOSITION. WHERE THEY'RE ALSO REQUESTING DOCUMENTS
20 AS A REASON TO PERMIT THE RECIPIENT TO DETERMINE WHETHER THERE
21 ARE ANY OBJECTIONS TO SUPPLYING THOSE DOCUMENTS.

22 MR. ROSEN: YOUR HONOR --

23 THE COURT: YES.

24 MR. ROSEN: -- THIS IS MR. ROSEN, MAY I ADDRESS THAT
25 ISSUE?

1 THE COURT: YES, YOU MAY.

2 MR. ROSEN: YOUR HONOR, RULE 30(B)5 ALLOWS FOR A
3 DEPOSITION NOTICE TO INCLUDE THE PRODUCTION OF DOCUMENTS AT A
4 DEPOSITION. AND IT SAYS, THE PROCEDURES, BUT NOT THE TIME,
5 THE PROCEDURES UNDER RULE 34, WILL APPLY.

6 THIS ISSUE HAS BEEN DEBATED MANY TIMES, AND I HAVE
7 HAD AT LEAST A DOZEN MOTIONS ON THIS VERY ISSUE, OVER THE
8 YEARS, IN VARIOUS FEDERAL COURTS, ALTHOUGH I CANNOT SAY I'VE
9 HAD IT -- EVER HAD THE ISSUE ARISE IN NEVADA, AND THE
10 RESOLUTION OF IT IS UNIFORM. AND THAT IS, RULE 30(B)5 ALLOWS
11 FOR A SHORTENED PERIOD OF TIME FOR PRODUCTION OF A DISCREET
12 NUMBER OF DOCUMENTS WHICH ARE GOING TO BE EXAMINED ON. IF YOU
13 WANT TO SERVE A WHOLE FULL-BLOWN RULE 34 REQUEST, YOU SHOULD
14 NOT USE RULE 30(B)5 TO CIRCUMVENT THE 30 DAY PERIOD. BUT IF
15 THE REQUEST IS A DISCREET AND FINITE NUMBER OF DOCUMENTS, TO
16 BE USED AT THE DEPOSITION, COURTS HAVE UNIFORMLY HELD THAT
17 30(B)5 DOES NOT REQUIRE THE 30 DAYS OF RULE 34. AND INDEED,
18 IT WOULD BE ILLOGICAL TO HOLD THAT, BECAUSE IF ONE CONCLUDED
19 THAT UNDER RULE 30(B)5 YOU HAD TO GIVE 30 DAYS FOR PRODUCTION
20 OF DOCUMENTS, AS YOU DID UNDER RULE 34, THERE WOULD NEVER,
21 EVER BE A DEPOSITION NOTICE THAT INVOKED RULE 30(B)5. YOU
22 WOULD SEPARATELY PROVIDE A NOTICE UNDER 34, RULE 34, FOR
23 PRODUCTION OF DOCUMENTS IN 30 DAYS, AND RULE 30(B)5 WOULD BE
24 READ OUT OF EXISTENCE.

25 AND HAD MR. ABBOTT RAISED THIS ISSUE BEFORE, THIS IS

1 THE FIRST TIME I'M HEARING IT, AND PAT, IS THIS THE FIRST TIME
2 YOU'RE HEARING THIS OBJECTION TOO?

3 MR. FLANAGAN: THIS 30 DAY ISSUE WAS --

4 MR. ABBOTT: DOCUMENTS.

5 MR. FLANAGAN: THAT'S CORRECT, ON THE DOCUMENTS.

6 MR. ROSEN: HAD MR. ABBOTT RAISED IT BEFORE, YOUR
7 HONOR, I WOULD HAVE BEEN PREPARED TO GIVE YOU THE CASE
8 CITATIONS WHICH SUPPORT NOT ONLY THE CONCLUSION, BUT THE
9 ANALYSIS AND WHY RULE 30(B)5 WOULD BE READ OUT OF THE RULES,
10 IF MR. ABBOTT'S INTERPRETATION IS CORRECT. BUT UNFORTUNATELY,
11 SO FAR WE HAVE HAD SERIATIM OBJECTIONS, I'M ON VACATION, I
12 WANT REOPENING OF -- I WANT UNSEALING OF DOCUMENTS IN MARIN
13 COUNTY, CALIFORNIA. AND ALTHOUGH MR. ABBOTT HAS COMMUNICATED
14 OBJECTIONS ON AT LEAST TWO OCCASIONS TO MR. FLANAGAN, AND MR.
15 FLANAGAN TO US, WE'VE NEVER HEARD THIS BEFORE.

16 MR. FLANAGAN: THE 30 DAY RULE THAT CAME UP IN THE
17 DISCUSSIONS WITH MR. ABBOTT AND I, I HAD UNDERSTOOD, TO APPLY
18 TO THE DEPOSITION, NOT TO THE DOCUMENTS, AND I WAS -- I
19 THOUGHT THAT WE HAD GIVEN REASONABLE NOTICE, UNDER THE RULE,
20 TO PROVIDE FOR THE DEPOSITION.

21 MR. ABBOTT: WELL, OF COURSE, THAT'S NOT WHAT THE
22 RULES SAY. THE RULES SAY THAT IF YOU COUPLE RULE 30 WITH A
23 REQUEST FOR DOCUMENTS, YOU MUST COMPLY WITH THE PROCEDURE
24 OUTLINED IN RULE 34(K). THIRTY-FOUR IS VERY CLEAR -- EXCUSE
25 ME -- ON 34(B) -- THE RULE IS VERY CLEAR THAT THE RECEIVING

1 PARTY HAS 30 DAYS. I DID NOT INVENT THE PROCEDURE THAT YOU
2 ELECTED TO FOLLOW.

3 MR. FLANAGAN: YOUR HONOR, WE HAVE A VERY LIMITED --

4 THE COURT: ALL HE WAS TRYING TO EXPLAIN --

5 MR. FLANAGAN: I'M SORRY, GO AHEAD.

6 THE COURT: ALL HE WAS TRYING TO EXPLAIN, MR. ABBOTT,
7 IS THAT WHEN HE TALKED TO YOU HE THOUGHT THAT THE 30 DAYS THAT
8 YOU WERE SAYING YOU DIDN'T GET, WAS AIMED AT -- HE SHOULD
9 HAVE -- YOU SHOULD HAVE GIVEN HIM 30 DAYS FOR THE DEPOSITION,
10 AND THE WAY HE HAS THIS WORDED, I HAVE TO AGREE THAT WAS WHAT
11 HE HAD IN MIND.

12 MR. ABBOTT: WELL, HOW DO YOU TRANSLATE THAT INTO
13 WHAT I HAD IN MIND?

14 MR. ROSEN: YOUR HONOR, THIS IS MR. ROSEN --

15 THE COURT: WELL, THEY WERE MERELY SAYING THIS WAS
16 THE FIRST TIME IT HAD COME UP. AND YOU WERE --

17 MR. ROSEN: YOUR HONOR, THIS IS MR. ROSEN --

18 THE COURT: -- EXPLAINING THAT, NO IT WASN'T, YOU HAD
19 MENTIONED IT.

20 MR. ROSEN: -- AS I WENT THROUGH MY FEDERAL RULES OF
21 CIVIL PROCEDURE --

22 THE COURT: SO IT'S A MISUNDERSTANDING, I THINK, I
23 THINK WE CAN GO PAST THAT PART.

24 MR. ROSEN: YOUR HONOR, I'M SORRY, I CAN'T HEAR YOU
25 THAT WELL BUT I AM LOOKING THROUGH MY FEDERAL RULES OF CIVIL

1 PROCEDURE, AND IF YOU LOOK AT THE ADVISORY COMMITTEE NOTES TO
2 RULE 30, WHICH APPEARS ON PAGE 157 OF YOUR FEDERAL RULES
3 HANDBOOK. UNDER SUBDIVISION (B)5 YOU WILL SEE THE LAST
4 PARAGRAPH, UNDER THAT SUBDIVISION, SETS FORTH EXACTLY THE
5 ANALYSIS AND THE -- OF RULE 30(B)5 VERSUS RULE 34, THAT I'VE
6 JUST ARTICULATED.

7 THE COURT: WELL, THE COPY THAT I'M LOOKING AT IS THE
8 WEST HANDBOOK THAT HAS THE CIVIL PROCEDURE AND THEN MULTI-
9 DISTRICT LITIGATION RULES, AND SO FORTH.

10 MR. ROSEN: THAT'S EXACTLY WHAT I HAVE. I HAVE THE
11 1997 EDITION IN FRONT OF ME, AND IN THAT ONE --

12 THE COURT: OKAY, MINE IS THE 19 --

13 MR. ROSEN: -- THE ADVISORY COMMITTEE NOTES, UNDER
14 RULE 30, AND IN PARTICULAR 30(B)5 APPEAR AS I'VE INDICATED ON
15 PAGE 157. IT MIGHT BE A DIFFERENT PAGE IN THE 1998 VERSION,
16 AND I'M LOOKING FOR THE 1998 ONE RIGHT NOW.

17 MR. LIBERMAN: I'VE GOT IT. IT'S THE SAME PAGE.

18 MR. ROSEN: SAME PAGE, 157, ERIC?

19 MR. LIBERMAN: YES.

20 MR. FLANAGAN: YOUR HONOR, WITH YOUR PERMISSION. I
21 DON'T WANT TO GET OFF THE TRACK OF OUR GOAL WHICH WAS SIMPLY
22 TO TAKE THE DEPOSITION. AND THE DOCUMENTS WE'RE TALKING ABOUT
23 ARE LIKE, A DRIVER'S LICENSE, A RENTAL AGREEMENT, A LEASE
24 AGREEMENT, THAT SHOWS THAT HE WAS A RESIDENT. I MEAN, THAT'S
25 THE ONLY THING WE WANT.

1 MR. ABBOTT: ONLY IT'D SHOW NO SUCH THING.

2 MR. FLANAGAN: WELL, WE -- ALL WE'RE TALKING ABOUT IS
3 A HANDFUL OF DOCUMENTS RELATING TO HIS RESIDENCY, WHICH IS THE
4 ONLY ISSUE JUDGE REED WANTS TO HEAR ON AUGUST 20TH. AND WE
5 JUST WANT TO TAKE THE PLAINTIFF'S DEPOSITION.

6 MR. ABBOTT: WE'RE PREPARED TO LET YOU TAKE THE
7 DEPOSITION AT SUCH TIME AS IT'S PROPERLY NOTICED, IF YOU ARE
8 ALSO GOING TO REQUEST WHATEVER SOMEONE, SOMEPLACE, DESCRIBES
9 AS A DISCREET LIST. IF WHAT YOU HAVE ASKED FOR IS A DISCREET
10 LIST, I'LL HAVE TO EDUCATE MYSELF ON WHAT IS UNDISCREET, OR
11 INDISCREET.

12 MR. FLANAGAN: YOUR HONOR, WE'RE TRYING TO BE
13 REASONABLE. WE ARE AVAILABLE THIS WEEK. WE'RE AVAILABLE --
14 WE HAD NOTICED IT NEXT WEEK. AS YOUR HONOR STATED, WE JUST
15 WANT TO TAKE HIS DEPOSITION IN ENOUGH TIME FOR US TO PREPARE
16 OURSELVES FOR THIS HEARING ON THE 20TH.

17 MR. ABBOTT: WHEN YOU RESPONDED WITH YOUR MOTION TO
18 DISMISS, ONE ASSUMES THAT YOU HAD KNOWLEDGE TO SUPPORT THE
19 BASIS FOR DISMISSAL WITHOUT REQUIRING A DEPOSITION. ISN'T
20 THAT A POINT THAT I CAN REASON ON?

21 MR. ROSEN: WELL, YOUR HONOR, WITH ALL DUE RESPECT TO
22 MR. ABBOTT --

23 THE COURT: WELL, IT SOUNDS TO ME, MR. ABBOTT, THAT
24 WHAT JUDGE REED IS LOOKING FOR --

25 MR. ROSEN: -- THAT STATEMENT DOES NOT --

1 MR. FLANAGAN: SANDY, SANDY --

2 THE COURT: HELLO?

3 MR. FLANAGAN: SANDY, JUST A MINUTE, THE JUDGE IS
4 TALKING.

5 THE COURT: HELLO?

6 MR. FLANAGAN: GO AHEAD, JUDGE.

7 THE COURT: IT SEEMS TO ME THAT THE HEARING THAT
8 JUDGE REED IS EXPECTING IS AN EVIDENTIARY HEARING SO HE CAN
9 MAKE A DETERMINATION, BECAUSE OBVIOUSLY IF IT'S NOT -- IF HE
10 WAS NOT IN NEVADA, AT THAT TIME, AND WAS NOT A DOMICILIARY OF
11 NEVADA, BUT RATHER OF CALIFORNIA, THEN THE COURT HAS
12 ABSOLUTELY NO JURISDICTION. AND THERE'S NO POINT IN GOING
13 FORWARD AND INTO THIS. SO, I WOULD THINK THAT IT WOULD
14 BEHOOVE -- IT WOULD BEHOOVE YOU, MR. ABBOTT, THAT YOU'D WANT
15 TO PRESENT WHATEVER YOU HAVE TO SHOW THAT HE WAS, INDEED,
16 DOMICILED IN NEVADA AT THE TIME THAT THIS WAS FILED.

17 MR. ABBOTT: WELL, AND WE WOULD WELCOME THAT.

18 THE COURT: OKAY. WELL, CAN'T WE JUST DO THAT, THEN?
19 WHATEVER DOCUMENTS THAT YOU'RE PLANNING TO PRESENT, AND IF YOU
20 HAVE THE PARTICULAR DOCUMENTS THAT THEY'VE COME UP WITH, LIKE
21 A DRIVER'S LICENSE OR WHATEVER, THAT -- OR IF HE HAS A LEASE
22 ON HIS APARTMENT, OR WHATEVER, THAT THOSE COULD BE DONE SO
23 THAT YOU CAN TAKE A QUICK DEPOSITION.

24 MR. ABBOTT: WE ARE PREPARED TO PRESENT OUR SIDE OF
25 THE ARGUMENT IN THE HEARING ON THE 20TH.

1 THE COURT: OKAY.

2 MR. ABBOTT: WE ARE NOT PREPARED TO, WITHOUT SOME
3 FURTHER OBSERVATIONS AND FILINGS WITH THE COURT, TO PRODUCE
4 ALL OF THE DOCUMENTS THAT THEY HAVE LISTED.

5 AND SO FAR AS A REFERENCE THAT IS MADE TO PROCEEDINGS
6 IN MARIN COUNTY, I WAS IN SAN RAFAEL, THE AREA WHERE THE MARIN
7 COUNTY PROCEEDINGS RECORDS WERE MAINTAINED, AND I LEARNED, FOR
8 THE FIRST TIME, OF A SEALING, CONFIRMED THAT THE RECORDS IN
9 THE MARIN COUNTY PROCEEDING HAD BEEN SEALED. AND ONE OF THE
10 MATTERS THAT WE WOULD LIKE TO DETERMINE IS WHETHER RTC AND THE
11 CHURCH OF SCIENTOLOGY ARE GOING TO USE DOCUMENTS OF WHICH MY
12 CLIENT HAS NO KNOWLEDGE, IN THE PROCEEDING TO BE HAD ON THE
13 20TH.

14 MR. FLANAGAN: I THINK WE ARE GETTING FAR AFIELD
15 ABOUT TAKING THIS DEPOSITION. THAT'S ALL WE WANT IS A SINGLE,
16 QUICK DEPOSITION.

17 MR. ROSEN: YOUR HONOR, I REPRESENT TO YOU THAT RTC
18 IS NOT USING ANY RECORDS FROM MARIN COUNTY ON THE SUBJECT, THE
19 ONE LIMITED FACTUAL ISSUE, THAT THIS HEARING ON AUGUST 20TH IS
20 DEVOTED TO. AND THAT IS, WHETHER OR NOT ON NOVEMBER 24TH,
21 1997, MR. ARMSTRONG WAS A DOMICILE OF NEVADA, OR NOT. THERE
22 IS NOTHING IN THE RECORDS OF THE MARIN COUNTY COURT THAT
23 ADDRESS THAT ISSUE.

24 MR. ABBOTT: WELL, AS NOW DEFINED, OF COURSE THERE
25 WOULD NOT BE THAT ISSUE. THAT ISSUE IS RAISED FOR THE FIRST

1 TIME, IN THIS CASE.

2 MR. FLANAGAN: I DON'T UNDERSTAND.

3 MR. ROSEN: I DON'T UNDERSTAND, EITHER.

4 MR. ABBOTT: WELL, ARE YOU SAYING THAT WE NEED
5 PRODUCE NO DOCUMENTS WHEN WE HAVE THE HEARING ON THE 20TH?

6 MR. FLANAGAN: I DON'T MEAN TO TELL YOU HOW TO
7 PRESENT YOUR SIDE OF THE CASE --

8 MR. ABBOTT: I DON'T MEAN TO ADVISE YOU ON HOW YOU
9 PRESENT YOURS.

10 MR. FLANAGAN: -- BUT ALL I'M REQUESTING IS THAT THE
11 COURT PERMIT THE PLAINTIFF'S DEPOSITION. THIS IS THE
12 INDIVIDUAL WHO BROUGHT THE LAWSUIT. IT'S NOT AS IF WE WANTED
13 TO BE SUED. THAT WOULD PERMIT THE DEFENDANT TO DEPOSE THE
14 PLAINTIFF ON THE VERY LIMITED ISSUE THAT JUDGE REED HAS
15 RAISED. AND WE ARE TRYING TO BE AS FLEXIBLE AS POSSIBLE.
16 WE'LL DO IT THIS WEEK. WE'LL DO IT, WHENEVER. BUT WE'D LIKE
17 TO DO IT AS SOON AS POSSIBLE TO PERMIT US TO DEFEND OURSELVES
18 AT THIS HEARING.

19 MR. ABBOTT: WHEN THE REQUEST WAS MADE BY YOUR
20 OFFICE, MR. FLANAGAN, I ASSUME THAT YOU WERE AWARE THAT THERE
21 IS A MANDATORY 30 DAY PERIOD WITHIN WHICH THE RECIPIENT MAY
22 OBJECT TO ALL OR SOME OF THE REQUESTS THAT ARE MADE. WE WANT
23 TO TAKE ADVANTAGE OF THAT, AND MAYBE MAKING A COUPLE OF
24 MOTIONS REGARDING THE FACT THAT THE RECORDS IN MARIN COUNTY
25 ARE SEALED. AND YOUR HONOR, I HAVE CAUSED -- AND I CALLED

1 FROM THE SAN RAFAEL AREA, LOOKING AT SOME OF THE BACKGROUND OF
2 THE STATE'S SUPERIOR COURT PROCEEDINGS IN MARIN COUNTY. I HAD
3 CALLED TO TELL MY OFFICE TO GO AHEAD WITH A NOTICE OF
4 DEPOSITIONS THAT WE WISH TO TAKE, WHERE WE HAVE NOT RUN INTO
5 THE 30 DAY RULE. AND WE GAVE DATES WITHIN WHICH, AND THAT
6 HAD -- THAT CAUSED ME TO CHANGE MY VACATION SCHEDULE,
7 SLIGHTLY, THAT WE HAVE ASKED THAT MR. MISCAVIGE BE PRODUCED
8 AND THAT A COUPLE OF OTHER PEOPLE BE PRODUCED.

9 MR. FLANAGAN: WELL, WE JUST FOCUS ON ONE THING AT A
10 TIME. AND LET'S FOCUS ON --

11 MR. ABBOTT: YES, I HAVE ALREADY FOCUSED -- EXCUSE
12 ME -- ON THE POINT THAT WE WANT TO TAKE ADVANTAGE OF THE 30
13 DAY MANDATE OF THE RULE.

14 MR. FLANAGAN: TO PREVENT A DEPOSITION OF THE
15 PLAINTIFF.

16 MR. ABBOTT: WELL, FOR WHATEVER REASON. NO, NOT
17 ENTIRELY.

18 MR. ROSEN: I THINK WE'RE GETTING FAR AFIELD. THE
19 ISSUE BEFORE YOU IS A MOTION TO COMPEL THE DEPOSITION OF THE
20 PLAINTIFF, AND I WOULD ASK THAT -- WE HAVE NOTICED IT FOR NEXT
21 WEEK. WE'RE WILLING TO DO IT ON THE 4TH OF AUGUST, NEXT
22 TUESDAY. IF MR. ABBOT IS GOING TO BE ON VACATION THAT DAY,
23 WE'RE WILLING TO DO IT THIS THURSDAY. WE LEAVE THE CHOICE UP
24 TO MR. ABBOTT. BUT WE WOULD LIKE AN ORDER COMPELLING THE
25 DEPOSITION.

1 IF MR. ABBOTT WANTS TO OBJECT TO DOCUMENTS AND REFUSE
2 TO PRODUCE THEM, WE'RE NOT GOING TO COME RUNNING TO COURT.
3 WE'LL TAKE IT UP WITH JUDGE REED. YOU KNOW, IN THE FACE OF AN
4 ORDER ON A MOTION TO COMPEL, IF MR. ABBOTT CHOOSES NOT TO
5 PRODUCE DOCUMENTS AND ARGUE THE 30 DAY RULE, LET HIM DO THAT
6 BEFORE JUDGE REED, AND WE'LL MAKE AN APPROPRIATE IN LIMINE
7 MOTION, FOR EITHER EXCLUSION OR AN ADVERSE INFERENCE TO BE
8 DRAWN. THAT'S OKAY WITH US. MR. ABBOTT CAN KEEP HIS
9 DOCUMENTS. IF HE DOESN'T WANT TO COMPLY WITH THE NOTICES --

10 MR. ABBOTT: I WANT TO COMPLY, SIR, WITH THE RULES.

11 THE COURT: ALL RIGHT, COUNSEL. I'VE HEARD IT. AND
12 AS I SAID, THIS WAS NOT MY CASE AND THE ONLY THING THAT I WAS
13 TRYING TO DO WAS TO HELP RESOLVE JUST ABOUT HIS DEPOSITION. I
14 DO NOT HAVE ATTACHED HERE, THE NOTICE ITSELF, SO I DON'T KNOW
15 WHAT IT SAYS. BUT I DON'T SEE ANY PROBLEM WITH IT. I THINK
16 SOMEONE IS GOING TO HAVE TO -- THAT THEY'RE ENTITLED TO TAKE
17 HIS DEPOSITION ON THIS LIMITED QUESTION THAT JUDGE REED HAS
18 POSED, SO THAT IT CAN BE DETERMINED EARLY IN THE CASE, AND IT
19 ISN'T AS EARLY AS IT MIGHT BE, WHETHER THERE IS ANY
20 JURISDICTION HERE.

21 SO, I'M GOING TO LET YOU CHOOSE, BEFORE I MAKE THE
22 DECISION OF THE DATE, MR. ABBOTT. DO YOU WANT IT ON THE 4TH
23 OF AUGUST OR DO YOU WANT IT ON THE 20 WHAT -- THE 27TH?

24 MR. ROSEN: WELL, THIS THURSDAY, YOUR HONOR, WOULD BE
25 THE 30TH OF JULY.

1 THE COURT: OKAY.

2 MR. ABBOTT: WELL, THE 17TH IS THE BEST DATE FOR
3 MYSELF.

4 THE COURT: WELL, THE 17TH THEN YOU GET ALL OF THAT
5 ONE, AND WHO HAS TIME THEN, TO GET EVERYTHING READY AND IF
6 THEY HAVE OTHER THINGS, OR THEY WANT SOMETHING PRODUCED, OR IT
7 ISN'T, OR IF THEY NEED TO LOOK AT SOMETHING ELSE, BASED ON
8 WHAT HE SAID, IT GIVES ALMOST NO TIME.

9 MR. ABBOTT: WELL, I'M LOOKING AGAIN AT 34(B) WHICH
10 ESTABLISHES THAT 30 DAYS THERE. I WOULD HAVE NO OBJECTION TO
11 THE 5TH OR 6TH OF THE MONTH, IF I CAN WORK OUT THAT SCHEDULE
12 ON THAT END.

13 WE WELCOME AN OPPORTUNITY FOR MR. -- EXCUSE ME -- NO,
14 EXCUSE ME, I'M LOOKING AT A DATE NOW -- BUT WE WELCOME THE
15 OPPORTUNITY FOR MR. ARMSTRONG TO TESTIFY AT ANY TIME. IT WAS
16 THE ADVERSARY WHO MADE A REQUEST THAT DOCUMENTS BE
17 PRODUCED --

18 THE COURT: I UNDERSTAND THAT, MR. ABBOTT. NOW, I
19 DON'T HAVE ALL AFTERNOON TO LISTEN TO ALL OF THIS, EITHER. I
20 HAVE THE PICTURE, AND I'M TELLING YOU THAT I'M GOING TO ORDER
21 THAT YOUR CLIENT APPEAR AND TAKE THE DEPOSITION. NOW, IT WAS
22 SET FOR THE 3RD OF AUGUST, AND IF WE CAN'T COME UP WITH
23 ANOTHER DAY, AS OF THE 4TH OR THE 30TH, THEN IT WILL BE
24 ACCORDING TO WHAT WAS NOTICED.

25 MR. ABBOTT: WELL, THAT IS A LITTLE BIT UNFAIR TO ME,

1 YOUR HONOR. WE HAVE -- I HAD PLANNED ON A THING VERY CLOSE TO
2 FAMILY, AND VERY CLOSE TO MY HISTORY, TO ATTEND A REUNION AT A
3 MASONIC HOME WHERE I GREW UP AS A CHILD, IT'S A VERY RARE
4 GATHERING. I WANT STILL TO DO THAT.

5 THE COURT: I UNDERSTAND.

6 MR. ABBOTT: BUT I CANNOT DO IT ON THE 3RD OR THE
7 4TH.

8 THE COURT: OKAY. HOW ABOUT ON THE 30TH OF JULY?

9 MR. ABBOTT: I CANNOT DO THAT. I WOULD BE IN A
10 TRAVEL STATUS, BECAUSE THE BIG REUNION PROCEEDINGS ARE ON THE
11 31ST AND THE 1ST. I HAVE NO PROBLEM WITH THAT, AND I AL
12 HAVE A REQUEST FOR FIXED DATES FOR THE APPEARANCE OF CERTAIN
13 OF THE DEFENDANTS' PERSONS, TO COME TO TESTIFY ON THE VERY
14 MATTERS WHICH JUDGE REED HAS SET -- AND THIS IS DEPOSITIONS
15 ONLY -- THAT JUDGE REED HAS SET FOR THE HEARING.

16 MR. FLANAGAN: CAN WE JUST STAY WITH THE PLAINTIFF'S
17 DEPOSITION. WE'LL DIRECT THOSE DEPOSITIONS TO JUDGE REED. IF
18 WE CAN JUST GET A DATE FOR THIS DEPOSITION.

19 MR. ROSEN: MR. ABBOTT, WHEN IS THE FIRST DAY THAT
20 YOU ARE AVAILABLE FOR THIS DEPOSITION? OF THE PLAINTIFF?

21 MR. ABBOTT: IT LOOKS LIKE -- CUTTING SOME THINGS
22 SHORT -- ON THE 11TH.

23 MR. ROSEN: THAT'S NOT ACCEPTABLE.

24 THE COURT: OKAY. HOW IS THE 11TH?

25 MR. ROSEN: NOT ACCEPTABLE, YOUR HONOR, AND I -- THIS

1 IS MR. ROSEN. I MUST SAY, MR. ABBOTT CLAIMS NOT TO BE
2 AVAILABLE ON THE 4TH OR 5TH OF AUGUST. IT IS NOT BEFORE YOU,
3 BUT HE SERVED A DEPOSITION NOTICE FOR --

4 MR. ABBOTT: FOR THE 5TH.

5 MR. ROSEN: -- US TO PRODUCE A WITNESS ON AUGUST 5.
6 NOW IF HE IS AVAILABLE TO TAKE A DEPOSITION OF RTC ON AUGUST
7 5, I DON'T FOR THE LIFE OF ME UNDERSTAND HOW HE CAN REPRESENT
8 THAT HE'S NOT AVAILABLE TO DEFEND HIS CLIENT'S DEPOSITION.

9 MR. ABBOTT: WELL, IF YOU WERE ON THE PHONE AS EARLY
10 AS I WAS, I HAD SAID THAT I -- I CHANGED MY SCHEDULE TO
11 ACCOMMODATE YOUR REQUIREMENTS.

12 MR. ROSEN: WELL, YOUR HONOR, APPARENTLY MR. ABBOTT
13 IS AVAILABLE AUGUST 5, AND IF --

14 MR. ABBOTT: AND I HOPE THAT THE -- THE PARTY
15 REQUESTED BY US IS AVAILABLE ON THAT DATE, WHICH WOULD NOT
16 MAKE IT AVAILABLE FOR MR. ARMSTRONG'S DEPOSITION.

17 MR. ROSEN: WELL, YOUR HONOR, MR. ABBOTT APPARENTLY
18 BELIEVES THAT HE CAN SERVE A DEPOSITION NOTICE AFTER WE ARE --
19 AFTER WE DO, NOTICE IT FOR AUGUST 5, AND THEN TELL YOUR HONOR,
20 'I'M NOT AVAILABLE.' HE'S NOT AVAILABLE TO DEFEND THE
21 PLAINTIFF ON AUGUST 5. THAT'S JUST UNACCEPTABLE.

22 MR. ABBOTT: WHAT IS WRONG WITH THE 11TH?

23 MR. ROSEN: WE'LL DO IT ON THE 4TH, MR. ABBOTT.

24 MR. ABBOTT: PARDON?

25 MR. ROSEN: WE'RE WILLING TO DO IT ON THE 4TH.

1 MR. ABBOTT: I DIDN'T -- I DIDN'T HEAR THE RESPONSE.

2 MR. ROSEN: WE'RE WILLING TO DO IT ON AUGUST 4TH.

3 MR. ABBOTT: WELL, ON THAT DATE I WOULD BE IN OMAHA
4 NEBRASKA.

5 THE COURT: WELL, YOU SAID THAT YOUR DEPOSITION THAT
6 YOU WANTED TO TAKE WAS ON THE 5TH. IS THAT RIGHT?

7 MR. ABBOTT: YES.

8 THE COURT: OKAY. SO WHY CAN'T THEY BOTH BE DONE ON
9 THE 5TH?

10 MR. ABBOTT: I WOULD LIKE THAT, BOTH.

11 MR. ROSEN: YOUR HONOR, THE --

12 THE COURT: WITH THE PLAINTIFF'S BEING FIRST.

13 MR. ROSEN: -- DEPOSITION THAT MR. ABBOTT HAS NOTICED
14 ON THE 5TH, WE WILL BE FILING A PROTECTIVE ORDER AGAINST. MR.
15 ABBOTT NEED NOT SHOW UP AT THAT DEPOSITION. THAT IS A
16 DEPOSITION OF THE CHAIRMAN OF THE BOARD OF RELIGIOUS
17 TECHNOLOGY CENTER --

18 MR. ABBOTT: I'M HAVING TROUBLE HEARING YOU, SIR.

19 MR. ROSEN: THE DEPOSITION THAT MR. ABBOTT HAS
20 NOTICED ON THE 5TH, WE WILL BE FILING A PROTECTIVE ORDER
21 AGAINST. THAT IS A DEPOSITION MR. ABBOTT NOTICED, FOR A
22 DEPOSITION IN LOS ANGELES. IN LOS ANGELES, NOT IN NEVADA, OF
23 THE CHAIRMAN OF THE BOARD OF RELIGIOUS TECHNOLOGY CENTER, WHO
24 KNOWS ABSOLUTELY NOTHING ABOUT THE ONE ISSUE BEFORE THE COURT,
25 AND THAT IS WHETHER OR NOT MR. ARMSTRONG WAS OR WAS NOT A

1 DOMICILE OF NEVADA ON NOVEMBER 24TH, 1997. IF MR. ABBOTT'S
2 CONFLICT WITH THE 5TH, IS HE THINKS HE HAS ANOTHER DEPOSITION
3 THAT DATE, I CAN ASSURE HIM HE WILL NOT.

4 THE COURT: WELL, THE WHOLE PURPOSE OF THIS --

5 MR. ROSEN: THE NOTICE OF DEPOSITION --

6 MR. ABBOTT: WHAT ABOUT THE 11TH?

7 MR. ROSEN: NO. IT'S UNACCEPTABLE.

8 MR. ABBOTT: WHY?

9 MR. ROSEN: BECAUSE I AM COMMITTED IN OTHER COURTS
10 THAT WEEK. AND I REALLY DON'T FEEL LIKE -- YOU SAID YOU'RE
11 AVAILABLE ON THE 5TH, MR. ABBOTT. YOU WILL NOT NEED TO BE IN
12 LOS ANGELES DEPOSING MR. MISCAVIGE. HE IS A DEFENDANT WHO HAS
13 BEEN DISMISSED BY THE ORDER OF THIS COURT. AND IF YOU WERE
14 AVAILABLE ON THE 5TH TO DEPOSE MR. MISCAVIGE, AND SIR, I
15 UNDERSTAND THAT YOU WERE AVAILABLE ON THE 5TH TO PRODUCE YOUR
16 CLIENT.

17 MR. ABBOTT: DO WE HAVE ANOTHER DATE FOR MR.
18 MISCAVIGE?

19 MR. ROSEN: NO. WE'RE MOVING FOR A PROTECTIVE ORDER,
20 SIR.

21 MR. ABBOTT: WELL, HE WAS DISMISSED, AND THAT MEANS
22 AS A NONPARTY, HE DOESN'T AND YOU DON'T GET 30 DAYS.

23 MR. ROSEN: THAT'S RIGHT, MR. ABBOTT, AND AS A
24 NONPARTY, YOU HAVE TO SERVE A SUBPOENA ON HIM. YOU CAN'T SEND
25 A DEPOSITION NOTICE FOR A DEPOSITION OF A NONPARTY WHO LIVES

1 IN CALIFORNIA. I RESPECTFULLY REFER YOU, SIR, TO RULE 45.

2 MR. ABBOTT: WE CAN DO -- WE CAN DO IT FOR AN OFFICER
3 OF THE CORPORATION, SIR.

4 THE COURT: OKAY.

5 MR. FLANAGAN: YOUR HONOR, WE'RE GETTING OFF FOCUS.

6 THE COURT: HEY, GUYS. HEY, HEY, HEY. I'M NOT GONNA
7 GET INTO ALL OF THESE. THIS IS GOING BACK TO JUDGE MCQUAID
8 AND TO JUDGE REED. THE ONLY THING THAT I AM INTERESTED IN IS
9 THAT WE SET A TIME FOR THIS. AND IF IT CAN'T -- IF THIS
10 ISN'T -- I'M GOING TO --

11 MR. ABBOTT: JUDGE, MAY I SAY --

12 THE COURT: -- ORDER THAT THE MAN HAS TO BE --

13 MR. ABBOTT: -- THAT WE WILL ACCOMMODATE YOUR
14 REQUIREMENTS AND AGREE TO THE 5TH. AND I WOULD LIKE IT
15 ENTERED THAT WE HAVE BOTH THE DEPOSITIONS.

16 THE COURT: WELL --

17 MR. ABBOTT: ONE IN THE MORNING AND ONE IN THE
18 AFTERNOON.

19 MR. ROSEN: NO, SIR. WE DON'T --

20 MR. ABBOTT: YES. I TAKE THE NOON AIRPLANE TO LOS
21 ANGELES FOR THAT PURPOSE.

22 MR. FLANAGAN: YOUR HONOR, CAN WE HAVE JULY 30TH FOR
23 THE PLAINTIFF'S DEPOSITION.

24 THE COURT: WELL, HE SAYS HE WON'T BE THERE. BUT
25 HE'S AVAILABLE ON THE 5TH OF AUGUST. BUT I CAN'T ORDER THAT

1 YOU TAKE THE OTHER DEPOSITION, IF IT'S SOMETHING THAT THE MAN
2 DOESN'T KNOW ANYTHING ABOUT WHETHER OR NOT --

3 MR. ABBOTT: OH, HE KNOWS. SCIENTOLOGY HAS THE BEST
4 INVESTIGATIVE ORGANIZATION IN THE WORLD, AND THIS GENTLEMAN
5 AND THEIR CHIEF INVESTIGATOR, THEIR CHIEF POLICEMAN, HAVE
6 REPORTS DAILY FROM THEIR DETECTIVES.

7 MR. FLANAGAN: YOUR HONOR, CAN WE GET AN ORDER OF THE
8 COURT SETTING THE PLAINTIFF'S DEPOSITION FOR AUGUST 5TH? IN
9 MY OFFICES, IN RENO, NEVADA?

10 THE COURT: WHERE IS THE PLAINTIFF?

11 MR. FLANAGAN: THAT'S WHAT WE WANT TO FIND OUT.
12 ALLEGEDLY HE'S A NEVADA RESIDENT, SO RENO, NEVADA SHOULDN'T BE
13 OF ANY PROBLEM.

14 THE COURT: OKAY. I THINK THAT IT'S REASONABLE AND
15 IT'S FAIR, AND I'M NOT GOING TO ORDER ANYTHING ELSE, BECAUSE
16 IT ISN'T BEFORE ME. AND I'M GOING TO ORDER THAT MR. --

17 MR. FLANAGAN: ARMSTRONG.

18 THE COURT: -- ARMSTRONG APPEAR AT MR. FLANAGAN'S
19 OFFICE AT 100 WEST LIBERTY STREET, ON THE 10TH FLOOR, ON
20 AUGUST 5, AT 10:00 O'CLOCK IN THE MORNING? 10:00?

21 MR. FLANAGAN: THAT'S FINE, YOUR HONOR.

22 THE COURT: ALL RIGHT. 10:00 O'CLOCK IN THE MORNING.

23 MR. ABBOTT: MY REQUEST THAT --

24 THE COURT: LET ME FINISH. AND THAT THIS BE FOR THE
25 PURPOSES ONLY TO DEPOSE ON THE ISSUE OF WHETHER OR NOT MR.

1 ARMSTRONG, THE PLAINTIFF, IS -- WAS DOMICILED IN NEVADA WHEN
2 THIS ACTION WAS FILED.

3 MR. FLANAGAN: THANK YOU, YOUR HONOR.

4 THE COURT: OKAY?

5 MR. ABBOTT: COULD I MAKE THAT -- LET ME ASK MR.
6 FLANAGAN, COULD I MAKE THAT 11:00 A.M.? I'M NOT CERTAIN ABOUT
7 MY AIRPLANE ARRIVAL TIME, BUT I NEED A LITTLE FLEXIBILITY ON
8 THAT 7:30 OR 7:40.

9 MR. FLANAGAN: I'LL BE CERTAINLY HAPPY TO ACCOMMODATE
10 YOU, SIR.

11 MR. ABBOTT: ALL RIGHT. THAT SOUNDS GOOD.

12 MR. ROSEN: YOUR HONOR, MAY WE ASK --

13 THE COURT: OKAY. NOW, I'LL CHANGE THAT. I'LL MAKE
14 IT 11:00 O'CLOCK AT MR. FLANAGAN'S OFFICE. OKAY?

15 MR. ABBOTT: AND I'M SORRY WE CONSUMED SO MUCH OF
16 YOUR TIME, JUDGE.

17 MR. ROSEN: YOUR HONOR.

18 THE COURT: YES?

19 MR. ROSEN: YOUR HONOR, THE ORIGINAL NOTICE WAS FOR
20 AUGUST 3, AND CONTINUING, IF NECESSARY. ALTHOUGH IT SHOULD
21 NOT BE, CONTINUING IF NECESSARY, ON AUGUST 4TH. IF WE ARE
22 ACCOMMODATING MR. ABBOTT TO START AT 11:00 A.M. ON AUGUST 5,
23 MAY WE ASK THAT YOUR HONOR'S ORDER BE, AND CONTINUING, IF
24 NECESSARY, ON AUGUST 6? I DON'T THINK IT SHOULD BE, BUT, YOU
25 KNOW, SOMETIMES FUNNY THINGS HAPPEN AT DEPOSITIONS, JUDGE.

1 THE COURT: I'M HAPPY TO DO THAT, ALTHOUGH I'LL BE
2 AMAZED IF THERE CAN POSSIBLY BE MORE THAN A DAY'S WORK TO FIND
3 OUT WHERE HE WAS DOMICILED ON A CERTAIN DAY.

4 MR. ROSEN: BUT JUST IN THE EVENT THAT SOMETIMES
5 DEPOSITIONS ARE --

6 THE COURT: I UNDERSTAND.

7 MR. ROSEN: -- DELAYED WITH SPEAKING OBJECTIONS AND
8 THE LIKE --

9 THE COURT: SO THAT WILL BE THE ORDER --

10 MR. ROSEN: -- WE WILL FINISH EASILY ON THE 5TH.

11 MR. FLANAGAN: THANK YOU, YOUR HONOR.

12 THE COURT: ALL RIGHT, THEN.

13 MR. FLANAGAN: I APPRECIATE THAT.

14 THE COURT: NOW, I'LL TURN THIS BACK OVER TO THE
15 PEOPLE THAT IT CAME FROM AND HOPE THEY DON'T GET ON MY CASE
16 FOR STEPPING IN.

17 MR. FLANAGAN: THANK YOU, VERY MUCH, JUDGE.

18 MR. ROSEN: THANK YOU, JUDGE. BYE, BYE.

19 (RECESS)

20

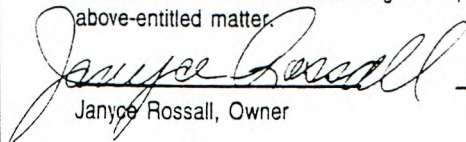
21 I certify that the foregoing is a correct transcript
22 from the electronic sound recording of the proceedings in the
above-entitled matter.

23

24

25

26

 8/10/98
Janice Rossall, Owner Date

PROOF OF SERVICE BY MAIL

I, Sylvia Baldemor, declare:

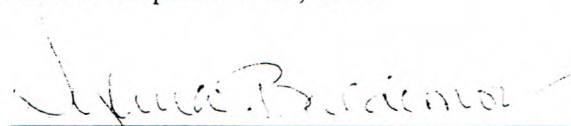
I am employed in the City of Reno, County of Washoe, State of Nevada by the law offices of Hale Lane Peek Dennison Howard and Anderson. My business address is 100 W. Liberty Street, Tenth Floor, Reno, Nevada 89501. I am over the age of 18 years and not a party to this action.

I am readily familiar with Hale Lane Peek Dennison Howard and Anderson's practice for collection and processing of its outgoing mail with the United States Postal Service. Such practice in the ordinary course of business provides for the deposit of all outgoing mail with the United States Postal Service on the same day it is collected and processed for mailing.

On September 29, 1998, I served the foregoing **DEFENDANTS RELIGIOUS TECHNOLOGY CENTER AND CHURCH OF SCIENTOLOGY INTERNATIONAL'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AN AWARD OF COUNSEL FEES AND EXPENSES** by placing a true copy thereof in Hale Lane Peek Dennison Howard and Anderson's outgoing mail in a sealed envelope, addressed as follows:

George W. Abbott, Esquire
George W. Abbott, Chtd.
2245 B Meridian Boulevard
P.O. Box 98
Minden, Nevada 89423

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on September 29, 1998.


Sylvia Baldemor